

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall United
States Courthouse, 40 Foley Square, in the City of New York,
on the 10th day of September, two thousand fifteen.

PRESENT: RALPH K. WINTER,
JOHN M. WALKER, JR.,
DENNIS JACOBS,
Circuit Judges.

United States of America,
Appellee,

-v.-

14-2742

Jose Aramis Brito,
Defendant-Appellant.*

FOR APPELLANT:

GWEN M. SCHOENFELD, Law Office
of Gwen M. Schoenfeld, LLC, New
York, New York.

* The Clerk of Court is respectfully directed to
amend the official caption as set forth above.

1 **FOR APPELLEE:**

ALEXANDER ROSSMILLER, Margaret
Garnett, Assistant United States
Attorneys (for Preet Bharara,
United States Attorney for the
Southern District of New York),
New York, New York.

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8 Appeal from a judgment of the United States District
9 Court for the Southern District of New York (Castel, J.)

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11 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,**
12 **AND DECREED** that the judgment of the district court be
13 **AFFIRMED.**

14
15 Jose Aramis Brito appeals from the judgment of the
16 United States District Court for the Southern District of
17 New York (Castel, J.), sentencing him principally to 144
18 months' imprisonment after convictions for (1) conspiracy to
19 commit robbery in violation of 18 U.S.C. § 1951 and
20 (2) conspiracy to possess with intent to distribute five
21 kilograms or more of cocaine in violation of 21 U.S.C.
22 § 846. We assume the parties' familiarity with the
23 underlying facts, the procedural history, and the issues
24 presented for review.

25
26 **1.** Brito contends that the evidence at trial was
27 insufficient to support the jury's guilty verdicts. We
28 affirm.

29
30 "A defendant challenging the sufficiency of the
31 evidence bears a heavy burden." United States v. Kozeny,
32 667 F.3d 122, 139 (2d Cir. 2011). The jury's verdict will
33 be upheld if "any rational trier of fact could have found
34 the essential elements of the crime beyond a reasonable
35 doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). In
36 considering the sufficiency of the evidence on appeal, we
37 consider the record in the light most favorable to the
38 Government. United States v. Temple, 447 F.3d 130, 136 (2d
39 Cir. 2006). "The traditional deference accorded to a jury's
40 verdict is especially important when reviewing a conviction
41 for conspiracy because a conspiracy by its very nature is a
42 secretive operation, and it is a rare case where all aspects
43 of a conspiracy can be laid bare in court with the precision
44 of a surgeon's scalpel." United States v. Jackson, 335 F.3d
45 170, 180 (2d Cir. 2003) (internal quotation marks and
46 alteration omitted).

1 Considering the evidence in the light most favorable to
2 the government, the jury verdicts must stand. During the
3 drive to the crime scene, Brito asked co-conspirators a
4 series of detailed questions about the plan for the robbery.
5 Brito argues that his questions sought to elicit information
6 he would weigh in deciding whether to join the conspiracy.
7 But another available inference is that he was asking these
8 questions in order to be better prepared for the robbery he
9 had agreed to participate in, and was about to take place.

10
11 Brito relies heavily on two statements he reportedly
12 made just before police arrived: "This is too easy," and
13 "This doesn't look good, does it?" But a jury would not be
14 irrational to conclude that Brito was simply showing anxiety
15 about the robbery conspiracy he had hastily joined. The
16 jury was not compelled to conclude from this evidence that
17 Brito never joined the conspiracy at all.

18
19 **2.** Brito seeks a new trial on the ground that the
20 district court improperly allowed admission of a prior drug
21 conviction under Federal Rule of Evidence 404(b). We reject
22 this argument too.

23
24 We review the district court's evidentiary ruling only
25 for abuse of discretion. United States v. LaFlam, 369 F.3d
26 153, 155 (2d Cir. 2004). This Circuit "has adopted an
27 'inclusionary' approach to other act evidence under Rule
28 404(b), which allows such evidence to be admitted for any
29 purpose other than to demonstrate criminal propensity." Id.
30 at 156 (quoting United States v. Edwards, 342 F.3d 168, 176
31 (2d Cir. 2003)). "To determine whether a district court
32 properly admitted other act evidence, the reviewing court
33 considers whether (1) it was offered for a proper purpose;
34 (2) it was relevant to a material issue in dispute; (3) its
35 probative value is substantially outweighed by its
36 prejudicial effect; and (4) the trial court gave an
37 appropriate limiting instruction to the jury if so requested
38 by the defendant." Id.

39
40 The Government presented evidence of Brito's prior drug
41 conspiracy conviction to show motive and intent to commit
42 the robbery. Specifically, because of Brito's knowledge of
43 the drug trade, he could readily monetize the proceeds of
44 the robbery: 50 kilograms of cocaine. The district court
45 did not abuse its discretion in admitting this evidence,
46 which was accompanied by a clear limiting instruction.

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3 For the foregoing reasons, and finding no merit in
4 Brito's other arguments, we hereby **AFFIRM** the judgment of
5 the district court.
6

7 FOR THE COURT:
8 CATHERINE O'HAGAN WOLFE, CLERK
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